

# GALLATIN RIVER COMMUNICATIONS

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Mr. John Hester  
Director, Telecommunications Division  
Illinois Commerce Commission  
State of Illinois Building  
160 N. LaSalle Ste. C-800  
Chicago IL 60601

Dear Mr. Hester:

Enclosed please find the Joint Comments of Citizens Telecommunications of Illinois, Consolidated Communications and Gallatin River Communications L.L.C. (collectively the Illinois Mid-Size Telecom Carrier Alliance) in response to the Staff Request for Comments posted on the Commission's website. If you have any questions please direct them to David Rudd at (217) 744-2420 dorudd@aol.com.

Sincerely,



David Rudd  
Gallatin River Communications L.L.C.

cc Jack Phillips  
Mike Schultz

**Joint Response of Illinois Mid-Size Telecom Carrier Alliance  
To Staff Request for Comments  
February 28, 2006**

Citizens Telecommunications of Illinois, Consolidated Communications and Gallatin River Communications (collectively "Illinois Mid-Size Telecom Carrier Alliance" or "Midsized Carriers") are each rural telephone companies with between 35,000 and 125,000 access lines in Illinois. The Illinois Mid-sized Telecom Carrier Alliance appreciates the opportunity to comment on this timely and important issue. Each of the three companies faces substantial competition in their respective markets from providers of video, communications and high-speed data services by VOIP, CLEC, CMRS and CATV companies. A timely and efficient procedural process is needed for the establishment of competitive service offerings while fulfilling the Commission's obligation to assure rates are "just and reasonable". Such a process is essential for the Illinois Mid-Size Telecom Carrier Alliance to respond to competition and for the resulting benefits to accrue to Illinois consumers.

In response to the Staff Request for Comments posted on the Commission's website, the Mid-sized companies offer the following comments.

**Should the Commission's decision(s) concerning whether to investigate rates for competitive telecommunications services differ according to provider types and sizes, service or product types, market conditions, service areas, or other such factors? If so, please explain how the Commission's exercise of authority should vary across such differing factors and why.**

The Illinois Mid-Size Telecom Carrier Alliance believes it is indeed appropriate to consider the size, service types, market conditions and service areas of the LEC because the Illinois Mid-Size Telecom Carrier Alliance companies collectively serve only approximately 3.5 percent of the access lines in the state. They possess far less market power and few resources with which to respond to a commission investigation. Therefore, it is appropriate to establish a less burdensome process for the mid-size companies, as opposed to the largest carriers in the state, to establish just and reasonable competitive rates.

Numerous past Commission decisions make it clear that the Commission has wide discretion to reasonably distinguish between, or classify, carriers based on the carrier's individual circumstances such as cost structure, market conditions, size and available resources and to treat carriers differently based on the classification or distinction. The Commission has frequently classified and differentiated among carriers in its administrative rules and its Orders. As the following examples demonstrate, the

Commission has classified and differentiated based on various factors including amount of revenue, number of access lines and the technology used to provide a service.

- > In 83 Ill.Admin.Code Part 220, utilities are classified as Class A, B or C based on annual gross revenue.
- > In 83 Ill.Admin.Code Part 285, the Commission classified utilities into large, medium and small based on annual revenue.
- > In 83 Ill.Admin.Code Part 711, the rule is only applicable to carriers with in excess of 35,000 lines.
- > In 83 Ill.Admin.Code Part 715, the rule's applicability is dependent on the type of technology a carrier utilizes.
- > In 83 Ill.Admin.Code Part 731, the Commission created four "levels" of carriers and applied substantially different requirements to each level.

As these examples demonstrate, the Commission has consistently recognized that large multistate telecommunications carriers have a greater impact on the overall Illinois market and have a greater capacity to respond to regulatory inquiries and produce detailed cost support than small or midsize telecommunications carriers. It is the position of the midsize carriers that the Commission should consider the size, services provided, market conditions and service area of a LEC in determining whether to initiate an investigation.

**Should the Commission require that carriers submit information (e.g., cost studies) to assist it in determining whether to open an investigation into the justness and reasonableness of rates for competitive telecommunications services? If not, please explain.**

In a competitive marketplace, cost is not the prime determinant for just and reasonable rates. Rather, the marketplace makes that determination. Consumers don't care what it costs a carrier to provide a service. Customers only care whether the price is relevant to the value received. A high-cost, inefficient company may offer its services at cost, but that is of little concern to a consumer that has other options for the purchase of the same or similar services from a competitor. The consumer cares about whether he or she is getting fair value. That judgment is based on comparability to prices for comparable or substitutable services. The "just and reasonable" standard is appropriately evaluated on comparability of prices for competing and substitutable services. An objective comparison of comparable services in both the same and other markets provides a basis for determining that a competitive rate is just and reasonable.

**Are there any specific factors or circumstances that might automatically “trigger” a Commission Section 9-250 investigation into whether a rate change for a competitive telecommunications service is just and reasonable? If yes, please provide an explanation or justification for each proposed trigger, and an analysis of how such a trigger would be applied, and an explanation of what information would be necessary to apply such a trigger.**

It is the position of the Midsize Carriers that there are no specific factors or circumstances that would automatically “trigger” a formal Section 9-250 investigation (emphasis added). Whether to initiate a Section 9-250 investigation to determine if a rate is just and reasonable is a question reserved for the sound exercise of the Commission’s expert discretion. Section 9-250 provides that an investigation can be initiated on the Commission’s own motion or upon complaint. The Midsize carrier’s feel that the Commission’s general oversight responsibilities to “keep itself informed as to the manner and method in which business is conducted” (5/4-101) combined with the ability of retail customers and carrier customers to file a complaint provides sufficient safeguards that competitive rates (or rate changes) are just and reasonable.

The Midsize Carriers suggest that the Commission take advantage of its statutory authority to *informally* gather information that might be useful in determining if a formal investigation is necessary. The Commission has explicit statutory authority to engage in activities involving obtaining information, requiring a regulated entity to respond to questions, obtain entity documents, enter and inspect entity property and facilities and to inspect books and records without initiating a formal investigation. (See Sections 4-101, 5-101, 8-301 and 10-107). Each of these provisions apply to both competitive and noncompetitive services (Section 13-101). It is the position of the Midsize Carriers that relying on “informal” information gathering rather than a formal docketed proceeding might better conserve Commission and party resources, result in more timely decisionmaking and reduce the number of unnecessary formal investigations.

**Should the Commission investigate (through a Section 9-250 hearing) whether a rate change for a competitive telecommunications service is just and reasonable without previously determining a “just and reasonable” standard appropriate for competitive telecommunications service rates? That is, should the Commission establish criteria in a rulemaking or other “global docket” to determine whether a rate for a competitive telecommunications service is just and reasonable or should the Commission review each tariff on a case by case basis? Please explain.**

The Illinois Mid-Size Telecom Carrier Alliance believes the Commission should establish a general framework for the procedural process of investigating whether rates are “just and reasonable.” However, given the variability of circumstances (e.g., size of market, competitors’ offerings, quality and reliability of service, etc.), a strict standard would be very difficult to establish.

**Please explain how the "just and reasonable" concept is most appropriately applied to competitive telecommunications services.**

The Illinois Mid-Size Telecom Carrier Alliance offers the following as being appropriate criteria for consideration in determination of whether rates are "just and reasonable":

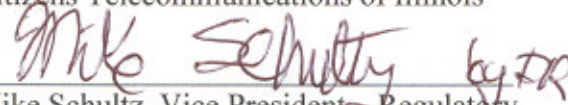
- a. The existence of a competitor or competitors offering the same, similar or substitutable services.
- b. Comparison to rates charged by competitors for the same, similar or substitutable services.
- c. Customer complaints or petition.
- d. The availability of substitute services.

**Can the Commission rely on market forces to ensure that rates for competitive telecommunications services (as identified and specified by the PUA) are just and reasonable without abrogating its responsibility to review such rates under Section 13-505?**

The Illinois Mid-Size Telecom Carrier Alliance believes the Commission can generally rely upon market forces to ensure rates for competitive telecommunications services (as identified and specified by the PUA) are just and reasonable without abrogating its responsibility to review such rates under Section 13-505. However, in the event of a perceived "market failure", the Commission should rely on its existing statutory authority under Section 9-250 to investigate on its own motion or upon complaint.

Respectfully Submitted,

  
Jack Phillips Regulatory Director  
Citizens Telecommunications of Illinois

  
Mike Schultz Vice President Regulatory  
Consolidated Communications

  
David Rudd Director of State Government Relations  
Gallatin River Communications L.L.C.